

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
February 21, 2019
Walnut Creek, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:10 a.m., February 21, 2019, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Nola Kennedy
Chris Laszcz-Davis
Laura Stock

Board Members Absent

Barbara Burgel
Dave Harrison

Board Staff

Christina Shupe, Executive Officer
Marley Hart, Special Consultant
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Anne Katten, CRLAF
Elizabeth Treanor, PRR
Ken Clark, BB&T Insurance Services
Carl Soto, National Day of Labor
Organizing Network

Kevin Bland, Ogletree Deakins
Carl Paganelli, DOSH
Pamela Murcell, CA Industrial Hygiene
Council

Michael Strunk, IUOE Local Union No. 3
Michael Musser, CA Teachers Association
Bruce Smith, Waymo
Cassie Hilaski, Nibbi
Nicole Marquez, Worksafe
Kevin Thompson, Cal/OSHA Reporter

Dan Leacox, Leacox & Associates
Jay Weir, AT&T
Mitch Steiger, CA Labor Federation
Jane Thomason, CNA/NNU
Louis Rocha, Communications Workers of
America, District 9
Steve Johnson, Walters & Wolf

Pete Bennett

Shanon Winston, Contra Costa County

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Pete Bennett discussed the same issues with the Board that he brought up at the November 2018 Board Meeting. He did not request anything specific from the Board.

Nicole Marquez, Worksafe, stated that her organization is a co-petitioner on petition 573, and her organization supports the Division's analysis and recommendation to grant the petition. She said that the Division's analysis demonstrates the need for added clarity and specificity to existing requirements regarding employee exposure to wildfire smoke. She stated that there need to be requirements to identify and evaluate wildfires smoke hazards that are straightforward, and the requirements that determine when protections are needed need to be simplified. She said that they also need to clarify what types of controls are needed, including personal protective equipment (PPE), and they need to protect employees from the hazards of wildfire smoke. She stated that in its analysis, the Division accurately characterizes employee exposure to wildfire smoke as an emergency requiring immediate attention. She said that wildfires occur throughout the year, and it is important to have a strong statewide standard in place that is based on local conditions and, at a minimum, requires employers to provide protections when the Air Quality Index (AQI) measurements reach unhealthy levels due to wildfire smoke. **Elizabeth Treanor, Phylmar Regulatory Roundtable**, echoed this comment. Ms. Marquez asked the Board to adopt the petition and, if needed, convene an advisory committee to discuss the technical issues.

Anne Katten, CA Rural Legal Assistance Foundation, stated that her organization supports petition 573. She said that because there has been so much rain lately, there will be more vegetation growth this summer, and this will increase the risk for wildfires, so this standard is very much needed to protect farmers and other outdoor workers from exposure to wildfire smoke. She stated that the evidence clearly shows that wildfire smoke is harmful to the lungs, the heart, and pregnant women. She said that her organization has some concerns with the conclusions listed in the Board staff's analysis of the petition. She stated that there is no need for a permissible exposure limit (PEL) for PM 2.5 as a prerequisite for regulation, and that the Division has the authority to regulate exposures without establishing a PEL. She said that the Division has done this for biological hazards, exposure to carcinogens, reproductive hazards in labs, and has required respiratory protection for welding without having a PEL. She also stated that her organization feels this petition is analogous to the heat illness prevention standard because it relies on weather data from government stations. She asked the Board to grant the petition.

Mitch Steiger, CA Labor Federation, stated that his organization supports petition 573 and urges the Board to adopt it when it comes up for a vote. He said that the Division's evaluation of the petition does a great job covering the technical side of the issue and demonstrates why introducing the AQI is an appropriate measure to take, and it appreciates the immediacy of the hazard. He stated that his organization is concerned about:

- 1.) Some of the conclusions drawn in the Board staff's evaluation of the petition, and
- 2.) If the petition is denied by the Board, precedents will be set.

He said that the Board staff's evaluation indicates that the Board staff feels that the petition should be denied because this issue can be resolved through the PEL process. He stated that his organization disagrees for several reasons, but primarily because the PEL process is slow and cumbersome, fails to align with the immediacy of the hazard, and it could be a challenge for enforcement to make sure all of the provisions are complied with. He also said that denying the petition will set a precedent by making the argument that employers should look at the AQI and then make adjustments through their injury and illness prevention plan (IIPP) to better protect workers. He stated that this stands in conflict with the rest of the Board staff's response, which says that the AQI is an inadequate, inappropriate measure to use in this case. He said that if this petition is denied, it could send a message to worker advocates that if something can conceivably be done through the IIPP process, the petition should be denied. He stated that the burden of figuring out the science should not be placed on the employer, and in order to avoid that, the regulation should clearly spell out what the employer needs to do and how to make those decisions.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that many members of her organization have outdoor workers who are exposed to wildfire smoke, and they are very concerned about protecting the health of their employees. She said that they have developed extensive programs to protect their employees from exposure to wildfire smoke. She also stated that her organization has had experience with employers who do not provide protection for their employees. She said that in one case, respirators were delivered to a worksite, but the employer would not let the employees wear them because the employer was afraid he would get cited by the Division for not having his employees medically evaluated and fit tested before using the respirators. She stated that he didn't understand the difference between wearing the respirators voluntarily and being mandated to wear them. She said that it is a good idea to have a regulation in place to protect workers from wildfire smoke, and that she would like to be added to the list of interested parties for advisory committees regarding this issue.

Dan Leacox, Leacox & Associates, representing the National Elevator Industry, Inc., stated that he wanted to correct a point that he made during his last presentation to the Board that the Board staff brought to his attention. He said that during his last presentation, he talked about how the elevator rulemaking shifted from the Building Standards Commission to the Standards Board, and that this statement was not correct. Mr. Leacox corrected himself to say that the elevator regulations originated with the Standards Board, but were sent to the Building Standards Commission for closer coordination. He stated that the point he tried to make at his previous presentation was that parts of the building code are updated every 2 or 3 years, but the elevator standards are not updated as frequently.

Mr. Leacox provided the Board with a graph showing the updated record of elevator safety in the elevator industry [Please see the file copy of the Board packet to view this document]. He stated that his organization is concerned about whether the proposed Group V elevator regulations have a good foundation in safety. He said that the main point of contention pertains to new technology and the direction that it is taking the industry, and the main example of this is machine-room-less elevators (MRL's). He stated that MRL's are a popular new technology, and they have gone from being 15% of the market in 2005 to 75% of the

market in 2017. He said that during that time, the accident rates plummeted. He stated that the OSHA recordable incident rate decreased 66% and the OSHA lost time incident rate decreased 75%. He also said that during that time, the model code was updated 5 times. He stated that most jurisdictions adopt the ASME code, but some adopt the ASME code with some changes. He said that California adopted the 2004 Group IV version of the ASME code with a few pages of changes. He stated that the proposed Group V regulations have 87 pages of changes, which is more than any other jurisdiction. He said that updates to the model code are driven by several factors, including:

- Safety
- Public policy demands
- Energy efficiency
- Space efficiency
- Customer demand

He stated that the proposed Group V code sets itself opposed to this revolution and will present many challenges for the industry. He asked the Board staff to look closely at the safety analysis supporting the Group V code because his organization has seen very little root cause analysis of accidents from the elevator unit, and the examples of hazardous situations that have been provided either violate the building code or the current elevator code. He also stated that older elevator equipment would not be affected by Group V because it only applies to new installations. He said that of the elevator accidents that occur, 68% of them happen to non-industry-related personnel, and most of the injuries that occur to elevator industry workers are strains and sprains.

Verta, Former Adult Film Performer, stated that she submitted a letter anonymously to the Board in July of 2017 that was read into the record [Ms. Hart read this letter into the record during the public meeting portion of the November 16, 2017 Standards Board meeting. Please see the file copy of the November 16, 2017 Board packet to view this letter]. She reread the letter into the record as herself. In the letter, she stated that many voices in the adult film industry have been silenced in hopes that the industry can prove to the Division that its self-regulation has been successful over the last 12 years. She said that she believed in the PASS system for a long time, but has now discovered that believing in that system was a mistake. She stated that many performers in the adult film industry have complained about repeatedly contracting gonorrhea and chlamydia on set, but the industry sees this as being inevitable. She said that these infections can be easily cured, but many strains are becoming antibiotic-resistant. She stated that the conversation about testing seems to always revolve around HIV, and that it is true that there has not been an on-set transmission of HIV in over 10 years on a PASS-regulated set. She said that PASS does use the most sensitive form of RNA testing available to spot acute HIV infection, but the industry uses a qualitative assay instead of a quantitative assay because the quantitative assay is more expensive. She said that a qualitative assay is incredibly sensitive and can detect an HIV viral load (over 30 copies) in a blood sample, and it will pick up acute HIV infections, but a person can have HIV and still test negative using this test. She stated that performers have the right to know the true HIV status of their partners, and though it is a minefield to navigate this in the straight side of the adult film industry due to stigma, performers have a right to their sexual health and safety. She also stated that there is no real official protocol for notifying partners when a performer tests positive for any infection. She said that it is left to the performers to notify everyone that they have been sexually active with in the last month about their test results, and if a performer

does not remember who they worked with or slept with, then that person may not be notified, given the lack of a central database or system to keep track of who has performed shoots on which sets. She said that the PASS system is an honor system, and to trust an honor system to monitor whether or not someone contracted HIV while on set is not the most reliable method.

After reading her letter into the record, she had the following requests for the Division if it ever plans to modify regulations again that pertain to the adult film industry:

1. Do not allow Michael Weinstein to bring converted performers before the Board to line the pockets of the AIDS Healthcare Foundation. It is offensive and heartless.
2. Do not allow the Free Speech Coalition (FSC) to misrepresent the truth regarding testing, PASS, and PREP and continue to put performers at risk for profit.
3. If performers come before you, please make sure that you are hearing their words and their concerns, not just the parroted speech of organizations who do not have performers' best interests in mind.

She said that any regulation that relies solely on testing for prevention should not be solely based on preliminary chain reaction testing or pre-exposure prophylactics. She stated that even though condoms are required by law, the Division lacks the resources to properly enforce this rule, and the FSC capitalizes on this. She said that future advisory committees need to have unbiased scientists in the room. She stated that she herself has performed preliminary chain reaction tests in lab settings, and that they are not a perfect science. She said that when they work, they are absolutely reliable, but there are too many variables. She also stated that the industry does not use high fidelity preliminaries and analytical PCR testing, even though the FSC continues to state that it uses the most sensitive testing available. She said that one testing facility that is used by the industry added an Elisa HIV test for no extra cost, which is a great first step. She also stated that there needs to be a reliable system in place to track scene partners, otherwise all regulations are useless. She said that decentralization creates difficulty, but the industry cannot, and should not, rely on an honor system for safety.

Michael Musser, CA Teachers Association, spoke about several subjects. First, he stated that his organization was happy with the work being done on the proposal for indoor heat illness prevention. He said that a template is being created that will protect employees and will put something in place for management to rely on. He stated that his organization is glad to see that the definition of "union representative" has been expanded to recognize all representatives, including those that are non-union, and they hope that it will present in the final draft of the proposal.

Mr. Musser also spoke about the proposal for workplace violence prevention in general industry. He said that his organization supports the requirements for recording incidents and record keeping because it is important for management and employees to look back on what has happened in the past and learn how to prevent it from happening again. His organization also supports the language regarding anti-retaliation. He said that it is important for employees to feel comfortable bringing forth issues and hazards to their supervisors without fear of retaliation.

Mr. Musser also stated that his organization supports petition 573. He said that it is needed to help employees and managers do their work safely and protect them from exposure to wildfire smoke.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:53 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:53 a.m., February 21, 2019, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated he is aware of no unresolved legal or procedural issues regarding items A-F on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Ms. Stock to adopt the consent calendar.

A roll call was taken, and all members present voted "aye." The motion passed.

B. OTHER

1. Legislative Update

Mr. Healy stated that there are three bills to report on:

SB 1: This bill would require specific agencies, including the Standards Board, to take prescribed actions regarding certain federal regulations and standards, including subject areas such as:

- Air quality
- Protection of species
- Labor standards
- Occupational safety and health standards

This bill would establish, as a protective baseline, federal regulation as it existed on January 19, 2017. This bill would also require the Standards Board to establish a quarterly list assessing whether any ensuing changes to federal OSHA regulations are less stringent than the January 19, 2017 baseline, and to possibly undertake emergency rulemaking to preserve California's protections if the federal standards are found to have been relaxed. Mr. Healy said that under the current law, California's Title 8 regulations remain in place with existing levels

of protection, even if federal OSHA relaxes its standards, so it will be interesting to see if amendments to the bill will take this into account. He also stated that this bill includes a right of private judicial action. It has been referred to the Senate Environmental Standards, Natural Resources, and Judiciary Committees.

AB 203: This bill would require construction employers who are engaged in specific work activities or vehicle operations in counties where Valley Fever is endemic to provide effective awareness training to all potentially exposed employees before an employee begins work, and annually after that. This bill does not specifically call for regulatory action at this time, but rather seeks to establish requirements statutorily. This bill has been referred to the Senate Labor and Employment Committee.

AB 457: This bill would require the Division to complete rulemaking to adopt a PEL for lead by February 1, 2020. This bill has not been sent to any committees.

2. Executive Officer's Report

Ms. Shupe stated that copies of the 2018 Year in Review and 2019 Proposed Rulemaking Projects are available on the back table for those who would like to take a copy. She said that the 2018 Year in Review shows that the Board staff received 6 petitions, 5 of which carried over into 2019 and will be considered by the Board in the near future. She said that the Board has continued to meet its 6-month statutory deadline for petitions. The Year in Review also shows that the Board staff docketed 656 variances, and all except 8 of them pertained to the elevator safety orders. She said that the number of variances increased 26% year over year. She stated that the 2019 Proposed Rulemaking Projects is an all-inclusive list, and while some projects are close to completion, others will take more time and possibly carry over into 2020. She said that several of these projects have moved forward thanks in large part to OSHSB staff coordination with the Division and the Labor Secretary's office. She also stated that the Board staff is working to accelerate petition 573 so that it will be ready for the Board's consideration at next month's meeting.

Ms. Stock asked Ms. Shupe for an update on the timelines for indoor heat and workplace violence prevention in general industry. She said that the Division has missed the legislatively-mandated deadline for submitting a proposal to the Board regarding indoor heat. **Ms. Shupe** referred this question to Mr. Berg. **Mr. Berg** stated that the Division posted another draft of proposed language for indoor heat and received comments on it. He said that the Division will review those comments and make final changes to the draft language. He stated that the economic impact analysis still needs to be done and will require a standardized regulatory impact analysis (SRIA), which is a huge task. **Mr. Thomas** asked Mr. Berg how long it will take to do that. **Mr. Berg** said that it will take at least a year to do the SRIA. **Ms. Stock** asked Mr. Berg what the consequences are for missing the legislatively-mandated deadline. **Mr. Berg** stated that he was unsure. He said that the Division is working as quickly as possible to complete this proposal and make sure that it is a good quality standard. He said that it will most likely come to the Board for public hearing in 2020.

3. Future Agenda Items

No future agenda items were mentioned.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:03 a.m.